

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD GARDNER, M.D.,	§	
	§	No. 112, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
THOMAS P. McDOWELL,	§	
	§	
Plaintiff Below,	§	C.A. No. 07C-12-191
Appellee.	§	

Submitted: March 18, 2009

Decided: March 19, 2009

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 19th day of March 2009, it appears to the Court that:

(1) The defendant-appellant, Richard Gardner, M.D., has petitioned this Court, pursuant to Supreme Court Rule 42 (“Rule 42”), to appeal from the Superior Court’s interlocutory opinion of February 4, 2009, which denied Gardner’s motion to dismiss. By order dated March 17, 2009, the Superior Court denied Gardner’s application for certification on the ground that the criteria of Rule 42 had not been met.

(2) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional

circumstances.¹ The Court has examined the Superior Court's February 4, 2009 opinion according to the criteria set forth in Rule 42. In the exercise of its discretion, the Court has concluded that exceptional circumstances such as would merit interlocutory review of the Superior Court's opinion do not exist in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ Del. Supr. Ct. R. 42(b), (d)(v).